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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ANGE MAURICE HUNTER,

Defendant and Appellant.

C082600

(Super. Ct. No. 12F04950)

After a jury found him guilty of two counts of assault with a deadly weapon and related offenses, defendant Ange Maurice Hunter moved for a new trial. The trial court denied his motion and sentenced him to an aggregate term of three years in state prison.

On appeal, defendant contends the trial court abused its discretion in denying his motion for a new trial. We conclude the court acted well within its discretion and affirm the judgment. The parties agree the abstract of judgment contains a clerical error, and we will direct the trial court to correct that error accordingly. We otherwise affirm.

## BACKGROUND

Throughout the evening of July 25, 2012, defendant repeatedly called his ex-girlfriend, Haillee. After 10:00 p.m., Haillee and her son<sup>1</sup> were being driven around by Rashad, a friend of Haillee's. Defendant called Haillee again. He was angry and yelling; he threatened her. She asked Rashad to continue driving while she called the police for help.

Meanwhile, defendant got into his car and found Haillee, her son, and Rashad driving around. Defendant followed them, both cars moving fast. He rammed his car into Rashad's, causing it to spin, and then hit Rashad's car a second time. Rashad and defendant each got out of their cars. Defendant ran after Rashad; Rashad ran away. Defendant then went back to the collision and tried to start Rashad's car. The car would not start. He chased Haillee around the car, threatened to kill Haillee and her son, and tried to get her son out of the back seat.

As bystanders approached the scene, defendant got back into his car and drove away. A bystander took Haillee and her son into the bystander's home where Haillee called 911. After law enforcement arrived, Rashad returned with his mother.

The People subsequently charged defendant with several felony and misdemeanor charges, including three counts of assault with a deadly weapon (the car) each count identifying a different victim: Haillee (count one), Rashad (count two), and Haillee's son (count three). A jury found defendant guilty on all charges except count one.

## DISCUSSION

Defendant contends the trial court erred in denying his motion for a new trial. “ “We review a trial court's ruling on a motion for a new trial under a deferential abuse-of-discretion standard.” [Citations.] “ ‘A trial court's ruling on a motion for new trial is

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<sup>1</sup> Defendant is the son's father.

so completely within that court's discretion that a reviewing court will not disturb the ruling absent a manifest and unmistakable abuse of that discretion.' ” ” ” ( *People v. Lightsey* (2012) 54 Cal.4th 668, 729; accord, *People v. McCurdy* (2014) 59 Cal.4th 1063, 1108.)

Defendant insists that in refusing to grant a new trial to redress the prosecutor's misconduct in impugning the defense counsel and misstating the law, and its own error in excluding his mother's testimony, the trial court abused its discretion.

#### *A. Prosecutorial Misconduct*

According to defendant, the prosecutor committed two prejudicial acts of misconduct by impugning defense counsel and misstating the law.

##### *1. Impugning Defense Counsel*

Defendant contends the following statements made by the prosecutor during closing amounted to misconduct because they implicitly impugned defense counsel:

“The defendant is the only person in this trial that got to sit through every single one of those witnesses before he testified. . . . [¶] . . . [¶]

“The defendant had the [police] report. He's the only person who got to see [the victim] testify at the preliminary hearing . . . .

“He saw all the exhibits. He was able to have all of that in his possession before he manufactured what he did, before he manufactured what he testified to, and that's important because no one else gets to do that.”

The prosecutor continued: “What else do we have that's been manufactured in this case? Your opinion is only as good as what you're provided with. Mr. Walker [the defense expert] is very experienced, very nice man. He was only trying to do his job in this case. You can only do a good job when you're provided with everything.

“You see the binders that we have on our table? That's this case. Do you see what he was provided with? That's it. Why would he not have been provided with everything? It's because a certain conclusion, a specific conclusion is wanted from what

he examines, and that's not a conclusion. That's biased based on all of the facts. Not only that, but his conclusion was just rendered three days before the start of this trial. Kind of interesting, isn't it, the fact this case is four years old and on the eve of trial all of a sudden his statement comes through June 10th, and not even in his own words.

"He's a paid expert, but they didn't want to pay him to do a report, to have something concrete, for diagrams, for calculations. . . .

". . . I mean, he's paid. You heard him. He primarily testifies for the defense . . . It's important to look at these things when determining what biases are involved, what defenses are manufactured versus being independent."

Defendant argues the prosecutor further impugned defense counsel by "claim[ing] that an exhibit introduced by the defense had been 'doctored.' " We conclude defendant forfeited the issue.

To preserve a prosecutorial misconduct claim for appeal, " "a criminal defendant must make a timely and specific objection and ask the trial court to admonish the jury to disregard the impropriety." ' [Citation.] The lack of a timely objection and request for admonition will be excused only if either would have been futile or if an admonition would not have cured the harm." (*People v. Powell* (2018) 6 Cal.5th 136, 171; accord, *People v. Hill* (1998) 17 Cal.4th 800, 820.) A defendant's filing of a motion for new trial will not revive claims that had not been preserved by a timely and specific objection. (*People v. Cowan* (2010) 50 Cal.4th 401, 486; accord, *People v. Williams* (1997) 16 Cal.4th 153, 254 [rejecting contention that "subsequent arguments in a motion for new trial may substitute for a timely objection"].)

Whether any of these statements amount to misconduct, defendant did not object to them at trial. Defendant argues an objection would have been futile because the trial court overruled his other objections, implying the court was predisposed to overrule his objections. Defendant's argument is not supported by the record; the trial court sustained at least two of defendant's objections. Defendant has thus failed to demonstrate an

objection would have been futile because the court would have overruled any objection raised. Accordingly, the issue has been forfeited and the trial court was well within its discretion to deny the motion for a new trial on this ground.

## *2. Misstatements of Law*

Defendant contends the prosecutor also committed prejudicial misconduct by misstating the law during closing argument. We conclude that any misconduct was cured by the trial court's admonition.

During her closing argument on the charge of assault with a deadly weapon, the prosecutor said, "defendant testified that maybe it was just a hit-and-run. Well, there was only one person who ran. So if you think you're the suspect in a hit-and-run, you're also the suspect in an assault with a deadly weapon. The difference between the two is the level of intent."

Defense counsel objected, "misstates the law . . . ," and the trial court ruled: "That's correct. That doesn't state the law insofar as I stated it."

The prosecutor continued: ". . . so if [defendant] figured he was at fault in this hit and run, as he called it, he's also a suspect in the assault with a deadly weapon when he tried to ram [the victims]."

Defense counsel raised the same objection. The court again admonished the jury: "Ladies and gentlemen, I'm giving you the law; follow the law that I give you."

Defendant argues the prosecutor's argument confused the jury about the intent element on the assault with a deadly weapon charge. That confusion, he claims, was not cured by the court's repeated admonition to follow the court's explanation of the law, and not counsel's. To support his claim, defendant points to the jury's verdicts: finding him not guilty of assault with a deadly weapon against Haillee but guilty of assault with a deadly weapon against Haillee's son and Rashad. These verdicts, he contends, are inconsistent and thus demonstrate the jury was confused by the prosecutor's argument about intent, even after the repeated admonitions given by the trial court.

Whether these are inconsistent verdicts, inconsistent verdicts do not “imply the jury must have been confused. [Citation.] An inconsistency may show no more than jury lenity, compromise, or mistake, none of which undermines the validity of a verdict. [Citations.]” (*People v. Lewis* (2001) 25 Cal.4th 610, 656.) Moreover, “ ‘[w]e presume that jurors understand and follow the court’s instructions.’ ” (*People v. Sandoval* (2015) 62 Cal.4th 394, 422.)

Accordingly, we conclude that any misconduct was cured by the trial court’s repeated admonitions to the jury and the trial court was well within its discretion to deny the motion for a new trial on this ground as well.

#### *B. Precluding Defense Witness*

Defendant further argues the trial court abused its discretion in denying his motion for a new trial because during trial, the trial court precluded defendant’s mother from testifying and that ruling also was an abuse of the court’s discretion. We find no abuse of discretion.

##### *1. Legal Principles*

“ ‘No evidence is admissible except relevant evidence.’ [Citation.] ‘Relevant evidence is evidence “having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” ’ [Citation.] ‘The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.’ [Citation.] ‘In general, the trial court is vested with wide discretion in determining relevance and in weighing the prejudicial effect of proffered evidence against its probative value. Its rulings will not be overturned on appeal absent an abuse of that discretion.’ ” (*People v. Hardy* (2018) 5 Cal.5th 56, 87.) Under this appellate standard, the court’s ruling “ ‘ “will not be disturbed except on a showing the trial court exercised

its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” ’ ’ ( *People v. Case* (2018) 5 Cal.5th 1, 46.)

As with all relevant evidence, the trial court retains discretion to admit or exclude evidence offered for impeachment, and its exercise of discretion is reviewable under the same standard. ( *People v. Case, supra*, 5 Cal.5th at p. 46.) This broad discretion includes the discretion to exclude impeachment evidence under Evidence Code section 352. ( *People v. Hamilton* (2009) 45 Cal.4th 863, 946; *People v. Turner* (2017) 13 Cal.App.5th 397, 408.) And, “ ‘ “[a]s a general matter, the ordinary rules of evidence do not impermissibly infringe on the accused’s right to present a defense.” ’ [Citation.] Rather, ‘[c]ourts retain . . . a traditional and intrinsic power to exercise discretion to control the admission of evidence in the interests of orderly procedure and the avoidance of prejudice.’ ” ( *People v. Ghobrial* (2018) 5 Cal.5th 250, 283.)

Finally, this court will not set aside a judgment by reason of the erroneous exclusion of evidence unless the error resulted in a miscarriage of justice. (Evid. Code, § 354.)

## *2. Relevant Background*

During trial, defendant indicated he wanted to call his mother as a witness. Her testimony would be used to “impeach Haillee.” In particular, defendant wanted to challenge Haillee’s testimony that she never lived with defendant’s mother and defendant did not have a stable family. Defendant’s mother would testify that Haillee did live with her for approximately four months and defendant did have a stable home.

The People opposed defendant’s request to present his mother as a witness. The prosecutor argued she was not given sufficient notice of the witness and the testimony was irrelevant in any event. The court indicated the testimony was “quite collateral” but also it could be completed with only a few questions. The court deferred its ruling until after additional evidence was submitted.

After hearing more testimony, including defendant's direct testimony and part of his cross-examination, the trial court excluded the testimony of defendant's mother. The court explained its ruling: "I wanted to indicate on the record that I had ruled at bench on the issue of the defendant's mother testifying partly for the reasons stated by the prosecution in terms of some subset aspect of late discovery. But primarily because I think it's collateral and while not extensive, would be somewhat time consuming on an issue that is really not germane, and I also think that the defendant's testimony on that point, the fact that Hayley [*sic*] stayed at the house for an extended period and so forth was both credible and not presenting with an issue that will be pivotal in any respect in this case."

The trial court gave essentially the same reasoning in denying defendant's motion for a new trial: "The testimony, proposed testimony, of [defendant's mother], it was utterly peripheral and so attenuated from anything at issue in the case. It was redundant of other testimony that did come in support of the proposition that the alleged victim in the count where there was an acquittal had said she hadn't lived there for some period of time and then you wanted to offer evidence that she had. Some evidence was offered and admitted that she had, and it just was a matter of no consequence in terms of any issues that were truly before the jury."

### *3. Analysis*

Defendant argues the trial court abused its discretion when it excluded his mother's testimony that Haillee did live with her for a period of time and that defendant's family was, in fact, stable. This testimony, he contends, went directly to Haillee's credibility, which was critical to his defense.

Defendant was looking to discredit Haillee's testimony on two very specific issues in order to undermine her overall credibility as a witness. As noted by the trial court, he was able to do that in a "credible" manner with his own testimony. Thus, the testimony



of defendant's mother (who would perhaps present as only marginally less biased than defendant himself) would have been cumulative and scarcely relevant.

In short, we cannot say the trial court's assessment of the evidence during trial was arbitrary, capricious, or patently absurd. (*People v. Case, supra*, 5 Cal.5th at p. 46.) And the trial court's decision not to grant defendant's motion for a new trial on this ground was not an abuse of the court's discretion.

*C. Clerical Error*

The parties agree there is a clerical error in the abstract of judgment that should be corrected. Defendant's misdemeanor conviction for child endangerment is erroneously recorded on section No. 1 of the abstract, the section reserved for felony convictions. The misdemeanor conviction should thus be removed from section No. 1 and correctly recorded as a misdemeanor conviction on page two of the abstract, section No. 13.

DISPOSITION

The trial court is directed to correct the abstract of judgment consistent with this opinion and forward a certified copy to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

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RAYE, P. J.

We concur:

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BUTZ, J.

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MURRAY, J.